

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 343 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

VITHALBHAI P PATEL

Appearance:

MR MIHIR JOSHI & MR B.B. NAYAK with MR MANISH R BHATT
for Petitioner
MR MANISH J SHAH, Advocate for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 16/04/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that no capital gains had accrued to the assessee merely by reason of the fact that the collector of Surat had declared the sale to be void?"

The relevant Assessment Year is 1974-75. The return of income was filed by the assessee on 31.10.1974 and a revised return on 28.1.1977 in respect of the relevant previous year. The assessee claimed that he owned 29 guntas of land of Survey No.23, which were partitioned on 5.1.1972. He therefore filed a return in respect of the capital gain on sale of land coming to his share. The ITO found that during the year under consideration, the assessee had sold 105 plots out of Survey No.23 and working out the long term capital gain at Rs. 32,533/- added the same in the total income of the assessee. The AAC held that as per the order dated 27.3.1975 of the Collector of Surat the said sale was null and void, in view of the provisions of Section 4 of The Gujarat Vacant Lands in Urban Area (Prohibition of Alienation) Act, 1972, which prohibited alienation of land in any 'vacant area' after the commencement of the Act, by way of sale, gift, exchange etc. It was held that when the sale was void, there was no transfer and hence, no capital gains arising out of any transfer. The Tribunal taking note of the fact that the sale of land in question was null and void, which fact was not disputed, held that since there was no sale of land in question in the eye of law, there could be no capital gain arising out of a transfer. The order of the AAC deleting the addition was therefore, upheld.

Admittedly, the purported sale was null and void under the provisions of Section 4 of The Gujarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972. Under Section 4 of that Act, it was provided that no person who owned any vacant land, shall on or after the appointed day, alienate such land by way of sale, gift, exchange, mortgage other than simple mortgage, lease or otherwise or effect a partition or create a trust of such land and any alienation made or partition effected or trust created in contravention of the said provision, be null and void. Therefore, the transaction in question was void ab-initio and it was so declared by an order of the Collector made on 29.3.75. Admittedly, the order of the Collector declaring that the sale transaction was null and void, was not challenged. Thus, since in the facts of this case as there was no sale

transaction in the eye of law, there could be no capital gain arising out of a null and void transfer of such land. In this view of the matter, the Tribunal was right in coming to the conclusion that no capital gain had accrued to the assessee. The question is accordingly answered in the affirmative against the Revenue. The reference stands disposed of with no order as to costs.

* /Mohandas